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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA-SOUTHERN DIVISION

LINDA DU,)	Case No. SA CV 16-00146-AS
)	
Plaintiff,)	MEMORANDUM OPINION AND
)	
v.)	ORDER OF REMAND
)	
CAROLYN W. COLVIN, Acting)	
Commissioner of Social)	
Security,)	
)	
Defendant.)	
_____)	

Pursuant to Sentence 4 of 42 U.S.C. § 405(g), IT IS HEREBY ORDERED that this matter is remanded for further administrative action consistent with this Opinion.

PROCEEDINGS

On January 29, 2016, Plaintiff filed a Complaint seeking review of the denial of her applications for Disability Insurance Benefits and Supplemental Security Income. (Docket Entry No. 1). The parties have consented to proceed before the undersigned United States Magistrate Judge. (Docket Entry Nos. 10, 12). On June 3, 2016, Defendant filed an

1 Answer along with the Administrative Record ("AR"). (Docket Entry Nos.
2 14-15). On August 15, 2016, the parties filed a Joint Position
3 Statement ("Joint Stip."), setting forth their respective positions
4 regarding Plaintiff's claims. (Docket Entry No. 17).

5 The Court has taken this matter under submission without oral
6 argument. See C.D. Cal. L.R. 7-15; "Order Re: Procedures In Social
7 Security Case," filed February 1, 2016 (Docket Entry No. 9).

8
9 **BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION**

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11 On October 2, 2012, Plaintiff, formerly employed as an assembler of
12 hospital plastic equipment and as an assembler of electronic chips (see
13 AR 283-85), filed applications for Disability Insurance Benefits and
14 Supplemental Security Income, alleging a disability since November 6,
15 2010. (See AR 231-48; see also AR 14).

16 On February 13, 2014, the Administrative Law Judge, Sharilyn Hopson
17 ("ALJ"), heard testimony from Plaintiff, medical expert Arvin Klein, and
18 vocational expert Alan Boroskin. (See AR 33-62). On May 19, 2014, the
19 ALJ issued a decision denying Plaintiff's applications. (See AR 14-26).
20 After determining that Plaintiff had severe impairments -- "trigger
21 fingers (one on one hand and two on the other hand); peripheral
22 neuropathy; plantar fasciitis; foot spurs; cervical spine abnormalities
23 per x-ray dated February 2013" (AR 16)¹ --, the ALJ found that Plaintiff
24 had the residual functional capacity ("RFC")² to perform less than the

25 ¹ The ALJ found that Plaintiff's other alleged impairments --
26 diabetes mellitus type 2, left sided diverticulosis, internal
27 hemorrhoids, and dysthmic disorder -- were non-severe, and that
28 Plaintiff did not have medically determinable fibromyalgia. (See AR 16-
18).

² A Residual Functional Capacity is what a claimant can still
do despite existing exertional and nonexertional limitations. See 20
C.F.R. §§ 404.1545(a)(1), 416.945(a)(1).

1 full range of light work,³ with the following limitations:
2 lifting/carrying 20 pounds occasionally and 10 pounds frequently;
3 standing, walking or sitting 6 hours in an 8-hour workday; climbing
4 stairs occasionally; no ladders, ropes, or scaffolds; stooping,
5 kneeling, crouching, and crawling occasionally; occasional exposure to
6 heat and cold; no work at unprotected heights; no work with dangerous
7 machinery; frequent gross and fine manipulation; and no forceful
8 gripping, grasping, and twisting such as opening a pickle jar for the
9 first time. (AR 19-25). Finding that Plaintiff was capable of
10 performing her past relevant work, the ALJ determined that Plaintiff was
11 not disabled within the meaning of the Social Security Act. (AR 25).

12 Plaintiff requested that the Appeals Council review the ALJ's
13 decision. (AR 10). The request was denied on January 7, 2016. (AR 1-
14 3). The ALJ's decision then became the final decision of the
15 Commissioner, allowing this Court to review the decision. See 42 U.S.C.
16 §§ 405(g), 1383(c).

17 **PLAINTIFF'S CONTENTIONS**

18 Plaintiff alleges the following claims of error: (1) The ALJ
19 failed to properly consider the opinion of a consultative examiner, Dr.
20 Ehsan Ali; (2) The ALJ failed to properly consider the opinion of
21 Plaintiff's treating physician, Dr. Dang; (3) The ALJ failed to properly
22 determine Plaintiff's RFC in light of the testimony of the medical
23 expert; (4) The ALJ failed to properly assess Plaintiff's testimony
24 regarding her pain and limitations; and (5) Remand is warranted based on
25 new and material evidence provided to the Appeals Council. (See Joint
26 Stip. at 2-4, 7-11, 14-23, 27-35).

27 ³ "Light work involves lifting no more than 20 pounds at a time
28 with frequent lifting or carrying of objects weighing up to 10 pounds."
20 C.F.R. §§ 404.1567(b), 416.967(b).

DISCUSSION

After consideration of the record as a whole, the Court finds that Plaintiff's first claim of error warrants a remand for further consideration. Since the Court is remanding the matter based on Plaintiff's first claim of error, the Court will not address Plaintiff's second through fifth claims of error.

A. The ALJ Failed to Properly Consider the Opinion of the Consultative Examiner

Plaintiff contends that the ALJ failed to address and consider the opinion of consultative examining physician, Ehasan Ali, M.D., specifically with respect to Dr. Ali's opinion that Plaintiff can stand and walk in only 20-minute intervals. (See Joint Stip. at 3-4, 7-10). Defendant contends that the ALJ properly considered Dr. Ali's opinion. (See Joint Stip. at 29-30).

An ALJ must take into account all medical opinions of record. 20 C.F.R. §§ 404.1527(b), 416.927(b). "Generally, a treating physician's opinion carries more weight than an examining physician's, and an examining physician's opinion carries more weight than a reviewing physician's." Holohan v. Massanari, 246 F.3d 1195, 1202 (9th Cir. 2001); see also Lester v. Chater, 81 F.3d 821, 830-831 (9th Cir. 1995). When a treating or examining physician's opinion is not contradicted by another physician, it may be rejected only for "clear and convincing" reasons. Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1995); Andres v. Shalala, 53 F.3d 1035, 1041 (9th Cir. 1995). When a treating or examining physician's is contradicted by another doctor, it may only be rejected if the ALJ provides "specific and legitimate" reasons supported by substantial evidence in the record. Id. at 30-31; see also Ryan v. Comm'r of Soc. Sec., 528 F.3d 1194, 1198 (9th Cir. 2008).

1 On February 20, 2013, Ehsan Ali, M.D. (Board Certified in Internal
2 Medicine), prepared a report following a complete internal medicine
3 examination of Plaintiff. (See AR 445-50). Based on the examination,
4 Dr. Ali diagnosed Plaintiff with "[d]iabetes mellitus with peripheral
5 diabetic neuropathy", "[c]hronic neck pain possibly related to
6 degenerative disc disease", and "bilateral hand pain of unclear
7 etiology." (AR 49). Dr. Ali opined as follows: "From a functional
8 standpoint, the claimant can lift and carry 25 pounds occasionally and
9 10 pounds frequently. She can stand and walk six hours in an eight-hour
10 day with normal breaks. She can stand in 20-minute intervals and walk
11 in 20-minute intervals. [¶] She can sit for eight hours in an eight-hour
12 day. Gross and fine manipulations are not limited." (AR 449-50,
13 underlining added for emphasis).

14 The ALJ addressed Dr. Ali's opinion as follows:

15 The next opinion considered is from Ehsan Ali, M.D.,
16 board certified internal medicine. Dr. Ali, a consultative
17 internal medical examiner, opined on February 20, 2013 that
18 the claimant could lift/carry 25 pounds occasionally and 10
19 pounds frequently; stand and walk six hours in an eight-hour
20 day; sit eight hours in an eight-hour day; and gross and fine
21 manipulations were not limited. (Exhibit B-4F). The
22 undersigned gives partial weight to Dr. Ali's assessed
23 limitations as Dr. Ali did not consider the medical evidence
24 received subsequent to his examination of the claimant nor the
25 claimant's testimony at the administrative hearing. The
26 undersigned gives further credit to the claimant's hand
27 issues, which are reflected in the residual functional
28 capacity.

(AR 23).

Here, the ALJ did not discuss or address Dr. Ali's opinion about Plaintiff's abilities to stand and walk in only 20-minute intervals, even though Plaintiff's counsel specifically raised that issue at the hearing (see AR 58-60). The ALJ therefore failed to provide any reason, let alone a specific and legitimate reason, for rejecting Dr. Ali's opinion. See Nguyen v. Chater, 100 F.3d 1462, 1464 (9th Cir. 1996) ("We hold that the ALJ erred because he neither explicitly rejected the opinion of [the examining physician], nor set forth specific, legitimate reasons for crediting [the nonexamining physician] over [the examining physician]."); Sinohui v. Astrue, 2011 WL 1042333, *14 (C.D. Cal. March 18, 2011) ("In excluding from his RFC determination [the examining physician]'s opinions that Plaintiff was moderately limited in his ability to understand and remember detailed instructions, in the ability to carry out detailed instructions, and in the ability to interact appropriately with the general public, the ALJ implicitly rejected those opinions without providing any reason for doing so. This constitutes error.").⁴

B. Remand Is Warranted

The decision whether to remand for further proceedings or order an immediate award of benefits is within the district court's discretion. Harman v. Apfel, 211 F.3d 1172, 1175-78 (9th Cir. 2000). Where no useful purpose would be served by further administrative proceedings, or where the record has been fully developed, it is appropriate to exercise this discretion to direct an immediate award of benefits. Id. at 1179 ("[T]he decision of whether to remand for further proceedings turns upon the

⁴ The Court disagrees with Defendant's contention that Dr. Ali's opinion contained "obviously contradictory statements" (Jt. Stip. at 5). Moreover, although Defendant attempts to justify the ALJ's decision based on the ALJ's rejection of the opinion of the treating podiatrist and the ALJ's reliance on the opinions of the non-examining State Agency reviewing physicians (see Jt. Stip. at 6), the Court will not consider reasons for rejecting Dr. Ali's opinion that were not given by the ALJ in the Decision. See Pinto v. Massanari, 249 F.3d 840, 847-48 (9th Cir. 2001); SEC v. Chenery Corp., 332 US 194, 196 (1947).

1 likely utility of such proceedings."). However, where, as here, the
2 circumstances of the case suggest that further administrative review
3 could remedy the Commissioner's errors, remand is appropriate. McLeod
4 v. Astrue, 640 F.3d 881, 888 (9th Cir. 2011); Harman v. Apfel, supra, 211
5 F.3d at 1179-81.

6 Since the ALJ failed to properly reject the opinion of the
7 consultative examiner, remand is appropriate. Because outstanding issues
8 must be resolved before a determination of disability can be made, and
9 "when the record as a whole creates serious doubt as to whether the
10 [Plaintiff] is, in fact, disabled within the meaning of the Social
11 Security Act," further administrative proceedings would serve a useful
12 purpose and remedy defects. Burrell v. Colvin, 775 F.3d 1133, 1141 (9th
13 Cir. 2014)(citations omitted).⁵
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21 ⁵ The Court has not reached any other issue raised by Plaintiff
22 except insofar as to determine that reversal with a directive for the
23 immediate payment of benefits would not be appropriate at this time.
24 "[E]valuation of the record as a whole creates serious doubt that
25 Plaintiff is in fact disabled." See Garrison v. Colvin, 759 F.3d 995,
26 1021 (2014). Accordingly, the Court declines to rule on claims
27 regarding the ALJ's failure to properly consider the opinion of
28 Plaintiff's treating physician, Dr. Dang (see Jt. Stip. at 10-11, 14-
15), the ALJ's failure to properly determine Plaintiff's RFC in light of
the testimony of the medical expert (see Jt. Stip. at 15-19), the ALJ's
failure to properly assess Plaintiff's testimony regarding her pain and
limitations (see Jt. Stip. at 19-23, 27-28), and remand based on new and
material evidence provided to the Appeals Council (see Jt. Stip. at 28-
35). Because this matter is being remanded for further consideration,
these issues should also be considered on remand.

1
2 **ORDER**

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4 For the foregoing reasons, the decision of the Commissioner is
5 reversed, and the matter is remanded for further proceedings pursuant to
6 Sentence 4 of 42 U.S.C. § 405(g).

7 LET JUDGMENT BE ENTERED ACCORDINGLY.

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9 DATED: September 9, 2016

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11 /s/
12 ALKA SAGAR
13 UNITED STATES MAGISTRATE JUDGE
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